

SENATE BILL 687

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2001 Regular Session
11r2214
CF 11r2215

By: **Senators Dorman, Astle, DeGrange, Exum, Hafer, Mitchell, and Ruben**
Introduced and read first time: February 2, 2001
Assigned to: Finance

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 22, 2001

CHAPTER _____

1 AN ACT concerning

2 **Business Regulation - Motor Fuel - Below Cost Sales**

3 FOR the purpose of prohibiting a retail service station dealer from selling motor fuel
4 below cost, subject to certain exceptions; requiring the Comptroller of the State,
5 on receipt of a certain complaint, to conduct a certain investigation within a
6 certain amount of time; establishing certain penalties for a violation of this Act;
7 exempting the sale of motor fuel sold by a retail service station dealer from the
8 provisions of the Sales Below Cost Act; defining a certain term; and generally
9 relating to prohibiting certain sales of motor fuel at below cost.

10 BY repealing and reenacting, with amendments,
11 Article - Business Regulation
12 Section 10-301 and 10-316
13 Annotated Code of Maryland
14 (1998 Replacement Volume and 2000 Supplement)

15 BY adding to
16 Article - Business Regulation
17 Section 10-304.1
18 Annotated Code of Maryland
19 (1998 Replacement Volume and 2000 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article - Commercial Law
22 Section 11-402
23 Annotated Code of Maryland

1 (2000 Replacement Volume and 2000 Supplement)

2 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
3 MARYLAND, That the Laws of Maryland read as follows:

4 **Article - Business Regulation**

5 10-301.

6 (a) In this subtitle the following words have the meanings indicated.

7 (b) (1) "Dealer" means a person who:

8 (i) imports any gasoline into the State;

9 (ii) blends, in the State, any gasoline on which the motor fuel tax
10 has not been paid;

11 (iii) refines, in the State, any gasoline on which the motor fuel tax
12 has not been paid; or

13 (iv) acquires, in the State, any gasoline on which the motor fuel tax
14 has not been paid, for:

15 1. export; or

16 2. wholesale distribution.

17 (2) "Dealer" includes:

18 (i) the State when it engages in any activities listed in paragraph
19 (1) of this subsection; and

20 (ii) a political subdivision of the State when it engages in any of the
21 activities listed in paragraph (1) of this subsection.

22 (3) "Dealer" does not include a person who brings gasoline into the State
23 in the fuel supply tank of an aircraft, motor vehicle, or vessel.

24 (c) "Manufacturer" means a person who in the State blends gasoline from
25 blend stocks before final sale.

26 (D) ~~"SELL MOTOR FUEL BELOW COST" MEANS TO SELL MOTOR FUEL AT A~~
27 ~~PRICE THAT IS LESS THAN THE TOTAL OF:~~

28 (1) THE MOST RECENTLY PUBLISHED AVERAGE RESELLER RACK COST
29 OF MOTOR FUEL BY GRADE AND QUALITY, AS CALCULATED BY THE OIL PRICE
30 INFORMATION SERVICE (OPIS), FOR THE PARTICULAR TERMINAL FROM WHICH THE
31 MOTOR FUEL WAS DELIVERED TO THE RETAIL SERVICE STATION DEALER, OR THE
32 ACTUAL INVOICE COST FROM THE SUPPLIER OF THE PRODUCT, WHICHEVER IS
33 LOWER; AND

1 (2) THE FREIGHT CHARGES AND ALL APPLICABLE FEDERAL, STATE, AND
2 LOCAL TAXES NOT INCLUDED IN THE INVOICE COST.

3 [(d)] (E) "Special fuel seller" has the meaning stated in § 9-301(s) of the Tax -
4 General Article.

5 10-304.1.

6 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A RETAIL
7 SERVICE STATION DEALER MAY NOT SELL MOTOR FUEL BELOW COST.

8 (B) A RETAIL SERVICE STATION DEALER MAY SELL MOTOR FUEL BELOW COST
9 IF THE SALE IS:

10 (1) MADE IN GOOD FAITH TO MEET COMPETITION;

11 (2) MADE AS PART OF A FINAL LIQUIDATION OR CLOSING OF THE
12 BUSINESS OF THE RETAIL SERVICE STATION DEALER;

13 (3) MADE AS PART OF A BONA FIDE CHARITABLE PROMOTION LASTING
14 NO LONGER THAN 2 DAYS; OR

15 (4) MADE UNDER THE DIRECTION OR ORDER OF A COURT OR
16 GOVERNMENT ENTITY.

17 (C) IF THE COMPTROLLER RECEIVES A COMPLAINT IN WRITING THAT A
18 RETAIL SERVICE STATION DEALER IS SELLING MOTOR FUEL BELOW COST, THE
19 COMPTROLLER SHALL INVESTIGATE AND DETERMINE WITHIN 3 BUSINESS DAYS OF
20 THE RECEIPT OF THE COMPLAINT WHETHER THE ALLEGATIONS CONTAINED IN THE
21 COMPLAINT ARE TRUE.

22 (D) THE COMPTROLLER SHALL ISSUE A STOP SALE NOTICE AND MAY
23 SUSPEND OR REVOKE THE CERTIFICATE OF REGISTRATION OF A RETAIL SERVICE
24 STATION DEALER IF THE COMPTROLLER DETERMINES THAT THE RETAIL SERVICE
25 STATION DEALER IS IN VIOLATION OF THIS SECTION.

26 10-316.

27 The Comptroller shall issue a stop sale notice if the Comptroller finds that a
28 person:

29 (1) stores or sells motor fuel from a location that does not have a valid
30 certificate of registration;

31 (2) willfully uses a motor fuel advertisement that is misleading; [or]

32 (3) willfully markets motor fuel that has not been approved; OR

33 (4) SELLS MOTOR FUEL BELOW COST IN VIOLATION OF § 10-304.1 OF
34 THIS SUBTITLE.

1

Article - Commercial Law

2 11-402.

3 This subtitle does not apply to an advertisement, offer to sell, retail sale, or
4 wholesale sale, if the merchandise:

- 5 (1) Is sold in a bona fide clearance sale and is so advertised and marked;
- 6 (2) Must be sold promptly in order to prevent loss;
- 7 (3) Is imperfect, damaged, or being discontinued and is so advertised and
8 marked;
- 9 (4) Is sold on the final liquidation of a business;
- 10 (5) Is sold for charitable purposes or to relief agencies;
- 11 (6) Is sold on contract to a department of a government or governmental
12 institution;
- 13 (7) Is sold by an officer acting under the order or direction of a court;
14 [or]
- 15 (8) Is sold at a price set in good faith to meet competition; OR
- 16 (9) IS MOTOR FUEL SOLD BY A RETAIL SERVICE STATION DEALER.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2001.